

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

In a December 19, 2019 development letter in the present claim, OWCP informed appellant that it was in receipt of his traumatic injury claim and that additional medical evidence was required in support of his claim. It afforded him 30 days to submit the requested evidence.

In a February 26, 2020 statement, appellant related that he had previously injured his back on September 13, 2018, during firefighting training. He noted that OWCP had accepted his prior claim for muscle strain, fascia and tendon of lower back in OWCP File No. xxxxxx192. Appellant further related that he was receiving physical therapy and had undergone treatment on the day following his claimed October 17, 2019 employment injury.

OWCP received October 22, 2019 emergency room records from Dr. Steven W. Smith, Board-certified in family practice, noting that appellant had experienced lower back pain for the past six days. The history of injury included that appellant was at work pulling a fire hose over his shoulder, twisted and had a sudden onset of pain to the lower back. Days prior, appellant had stepped off a fire truck, twisted and felt a pulling sensation in his back. Dr. Smith also noted that appellant had ongoing back problems which were alleviated with physical therapy. He diagnosed acute left-sided low back pain without sciatica.

Treatment notes dated October 23 and December 12, 2019 from Dr. Evan J. Jones, Board-certified in family practice, noted that appellant related that he had been in pain for over a year, and it was exacerbated at work while lifting. Dr. Jones found that appellant had left-sided radiculopathy. He diagnosed sciatic pain.

In a December 5, 2019 treatment note, Dr. Richard Perrin, Board-certified in neurosurgery, noted that appellant presented with severe back and leg pain that had been persistent for over a year. He diagnosed lumbar disc herniation with radiculopathy, lumbosacral spondylosis, and lumbosacral degenerative disc disease.

By decision dated January 29, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted October 17, 2019 employment incident. It concluded that the requirements had not been met to establish an injury causally related to the accepted employment incident.

OWCP subsequently received additional medical evidence, including copies of previously submitted records, diagnostic reports, notes from physician assistants and physical therapists, and an October 30, 2018 report from Dr. Cristin O'Grady, Board-certified in family practice, pertaining to a low back injury at work on September 13, 2018. It also received a January 22, 2020 operative report and hospital and anesthesia records from January 21 and 22, 2020, documenting that appellant had undergone a right L2-3 hemilaminectomy and discectomy.

Dr. Jones provided a February 24, 2020 report and noted that appellant originally was diagnosed with lumbar strain and sciatica, secondary to physical exertion while performing drills on the job on September 13, 2018. He opined that, "it is reasonable to assume that a lumbar strain and resulting sciatica could have resulted from physical exertion. The time of when appellant's pain started is consistent with the injury stated." Dr. Jones further opined that injury on October 17, 2019, exacerbated the September 13, 2018 employment injury.

On February 26, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He noted that, on September 13, 2018, he injured his lower back while performing firefighting training and annual fire hydrant flows, and that his claim was accepted. Appellant explained that he continued to receive physical therapy for his September 13, 2018 employment injury and was injured again on October 17, 2019. He also provided answers to OWCP's development questionnaire.

By decision dated May 5, 2020, OWCP's hearing representative affirmed the January 29, 2020 decision.

On April 15, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

In an October 28, 2020 report, Dr. Jones noted appellant's history of injury and treatment and opined that the October 17, 2019 injury was a "worsening of an injury that occurred at work on September 13, 2018 (File No. xxxxxx192 with OWCP) but much of the damage that is seen on [the] MRI [scan] is consistent with a twisting weightbearing movement as described by [appellant]." He opined that it could be argued that this was a continuation of an old injury, but the preponderance of the evidence pointed towards the injury occurring on October 17, 2019, "given his acute disability after this injury."

OWCP received October 29, 2020 diagnostic reports.

In an April 7, 2021 report, Dr. Perrin opined that appellant suffered an acute traumatic injury on October 17, 2019. He explained that a sudden pop in appellant's back due to acute tearing of the outer annulus fibrosis and the pain and numbness radiating down his leg was due to the nucleus pulposus causing nerve root compression.

By decision dated June 2, 2021, OWCP denied modification of the May 5, 2021 decision.

The Board has duly considered the matter and concludes that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.² For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.³ In this case, appellant has a previously accepted claim for strain of muscle, fascia and tendon of lower back under OWCP File No. xxxxxx192. The present claim also pertains to the lower back. However, the evidence in OWCP File No. xxxxxx192, is not part of the case record presently before the Board.

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

³ *Id.*; see *R.H.*, Docket No. 21-0575 (issued December 21, 2021); *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with the record in OWCP File No. xxxxxx192. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the June 2, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 19, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board